

O P E Atty Docket: 2543-28-93

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: application of:
Tod C. Duvall, et al.

Serial No.: 09/098,758
Confirmation No.: 4469

Filed: June 17, 1998

For: **SYNERGISTIC BLEND OF A METAL-BASED STABILIZER OR LEWIS ACID AND A FREE MERCAPTAN FOR ENHANCED PVC STABILIZATION** X

Group Art Unit: 1713
Examiner: Peter D. Mulcahy

PETITIONS EXAMINER:
Brian Hearn

RECEIVED

Mail Stop **PETITIONS**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NOV 04 2005

OFFICE OF PETITIONS

PETITION UNDER 37 C.F.R. § 1.181
FOR RECONSIDERATION OF DISMISSAL OF PRIOR
PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Sir:

This Petition Under 37 C.F.R. § 1.181 is being submitted, pursuant also to MPEP § 711.03(c)IA, in connection with the above-identified patent application which, unbeknownst to the Applicants or the assignee/owner (i.e., Morton International, Inc., a wholly owned subsidiary of Rohm and Haas Company, "ROH"), became abandoned for failure to prosecute.

As will be explained in detail hereinafter, Applicants' failure to prosecute was entirely unintentional and unavoidable and occurred because Applicants and ROH never received a non-final Office Action which was mailed March 29, 2002, or the Notice of Abandonment subsequently issued November 18, 2002, because these papers were both addressed to an entirely unrelated third party, the law firm of Venable, Baetjer, Howard and Civiletti, LLP in Washington, DC. Thus, there was no notice or opportunity for ROH to respond to the Office Action, or the Notice of Abandonment.

Upon investigation, it was determined and confirmed that both the non-final Office Action and the Notice of Abandonment were mailed by the United States Patent and Trademark Office (USPTO) to Venable, Baetjer, Howard and Civiletti, LLP, which is unrelated to, and has not been retained by, Rohm and Haas Company in connection with this patent application, or any other matter.

The previously submitted Petition Under 37 C.F.R. § 1.181 To Withdraw Abandonment (filed March 25, 2004 and resubmitted October 14, 2005) explained the foregoing circumstances in detail, but has been dismissed for failure to provide a copy of the docket record where the nonreceived Office communication would have been entered if it had been received and docketed. The rationale of *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) and Rule 1.181 require Applicants to submit convincing evidence that Applicants' representative at ROH did not receive the original non-final Office Action or the Notice of Abandonment. In the matter at hand, Applicants and their representative at ROH reasonably believed that the fact that the non-final Office Action and the Notice of Abandonment were both addressed to a third party, totally unrelated to and not retained by ROH was *prima facie* evidence that these papers could not have been received by Applicants or their representative at ROH. The fact that these papers were wrongly addressed is clear evidence, *res ipsa locquitor*, that the papers were not and could not have been delivered to ROH.

The requirement of MPEP § 711.03(c)IA is merely a policy instituted by the USPTO to provide guidance and simplify the showings necessary, rather than a requirement imposed by the patent laws or regulations. Nonetheless, Applicants' representative (the undersigned hereinbelow) hereby states that the Office communications discussed above (i.e., the non-final Office Action mailed March 29, 2002, and the Notice of Abandonment subsequently mailed November 18, 2002) were not received by ROH or Applicants. A search, by the undersigned representative, of the file jacket and docket records indicates that the Office communications were not received. A copy of the docket record where the nonreceived Office communications would have been entered had they been received and docketed is attached hereto. The non-final Office Action set a three month period, ending on June 29, 2002, for reply was set in the nonreceived Office action, and the attached copy of the docket report shows

no replies docketed for the period from June 2002 through September 2002 (i.e., 3-6 months after the mailing date of the non-final Office Action).

As noted in the decision dismissing the previously filed Petition, this application was filed on or after June 8, 1995, but before May 29, 2000, and, therefore, a terminal disclaimer is not required.

Conclusion / Requests

Based upon the foregoing statement and attached evidence, and pursuant to 37 C.F.R. § 1.181 and MPEP § 711.03(c)IA, the undersigned attorney hereby requests, on behalf of Applicants and ROH, that the USPTO take the following actions:

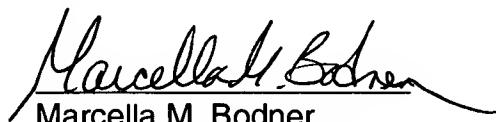
1. Withdraw the abandonment of the present patent application.
2. Reissue the non-final Office Action (originally mailed March 29, 2002) and re-set the due date for response thereto.

No fees are believed to be due in connection with the filing of this Petition for Reconsideration, under Rule 1.181. However, if any such fees, including petition and extension fees, are due, the Commissioner is hereby authorized to charge such additional fees, and to credit any overpayments, to **Deposit Account No. 18-1850**.

Please forward any correspondence concerning this Petition or the present patent application to the undersigned attorney at the address provided below.

I, Marcella Bodner, the undersigned attorney for Applicants, hereby certify that the foregoing statements are based upon my own personal knowledge and are true to the best of my knowledge.

Respectfully submitted,



Marcella M. Bodner
Attorney for Applicants
Registration No. 46,561
(215) 592-3025

Date: **October 31, 2005**
ROHM AND HAAS COMPANY
100 Independence Mall West
Philadelphia, PA 19106-2399



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty Docket No.: 2543-28-93

MMB/yv

In re Application of:
Tod C. Duvall, et al.

Serial No.: 09/098,758 : Group Art Unit: 1713

Confirmation No.: 4469 :

Filed: 06/17/1998 : Examiner: Peter D. Mulcahy

: PETITIONS EXAMINER:
: Brian Hearn

For: **SYNERGISTIC BLEND OF A METAL-BASED STABILIZER OR LEWIS ACID
AND A FREE MERCAPTAN FOR ENHANCED PVC STABILIZATION**

MAIL STOP: PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING

Sir:

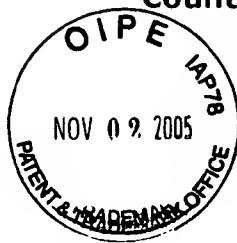
I hereby certify that the following correspondence is being deposited with the U.S. Postal Service as first-class mail with sufficient postage in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated next to my signature below:

Petition Under 37 C.F.R. §1.181 For Reconsideration of Dismissal of
Prior Petition to Withdraw Holding of Abandonment
Copy of Docket Record
Return Receipt Postcard

Date

10/31/2005

Yvette Vigliarose
Signature

[← Back To Application Search Results...](#)
 Print


Country Application Record Detail

Case Number: 2543-28-93

Country: (US) United States of America

Sub Case: 0

Case Type: CIP

Status: Pending

Division Code: 9 PLA

Division Name: Plastics Additives

Division Ref:

Agent Code: 9 ROHM1

Agent Name: Rohm and Haas Company

Sub-Agent Code:

Sub-Agent Name:

Agent Ref:

Tax Schedule:

Application Number: 09098758

Filing Date: 6/17/1998

Confirmation Number:

Publication Number:

Publication Date:

Patent Number:

Issue Date:

Parent Application Number: 08435413

Parent Filing Date: 5/10/1995

Parent Patent Number:

Parent Issue Date:

Expiration Date:

Status Date: 10/21/2005

Title: 9 Synergistic Blend Of A Metal-Based Stabilizer Or Lewis Acid And A Free Mercaptan For Enhanced PVC Stabilization

Location: HO

Remarks: File sent to Didrick on 2/17/00 Case handled by Bob Didrick

Completed Actions

Action Due	Due Date	Indicator	Taken
9 Response due	1/14/2000	Due Date	12/20/1999
9 Response - Final	5/21/2000	Due Date	7/6/2000
9 Response - Final	6/21/2000	Due Date	7/6/2000
9 Notice of Appeal	6/21/2000	Due Date	7/6/2000
9 Appeal Brief	8/21/2000	Due Date	10/27/2000
9 Resp to Rej dtd 8/31/00	11/30/2000	Due Date	2/23/2001
9 Response - Final - 2 mos.	4/27/2001	Due Date	4/23/2001
9 Notice of Appeal - 3 mos.	5/27/2001	Due Date	8/2/2001
9 Response Final - 3 mos.	5/27/2001	Due Date	4/18/2001
9 Appeal Brief - 5 mos.	7/27/2001	Due Date	8/2/2001
9 Resp to Ref dtd 5/18/01	8/18/2001	Due Date	11/1/2002
9 Response - Final - 2	1/6/2002	Due Date	2/5/2002

Response - Final-3
Status of Revival

2/6/2002	Due Date	2/5/2002
2/25/2005	Due Date	2/28/2005

no entries